

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
3 UNITED STATES OF AMERICA, ) Case 1:18-cr-00457  
4 Plaintiff, )  
5 v. ) Alexandria, Virginia  
6 BIJAN RAFIEKIAN, ) February 13, 2019  
7 Defendant. ) 2:00 p.m.  
8 ) Pages 1 - 17

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9 TRANSCRIPT OF  
10 DEFENDANT'S MOTION FOR A BILL OF PARTICULARS  
11 AND  
12 DEFENDANT'S MOTION FOR A SEPTEMBER TRIAL DATE  
13 BEFORE THE HONORABLE ANTHONY J. TRENGA  
14 UNITED STATES DISTRICT COURT JUDGE

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25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 THE CLERK: Criminal Case 1:18-cr-457, *United*  
2 *States v. Bijan Rafiekian*.

3 Counsel, will you please note your  
4 appearances for the record.

5 MR. GIBBS: Good afternoon, Your Honor. John  
6 Gibbs and Evan Turgeon on behalf of the United States.

7 THE COURT: Good afternoon.

8 MR. MacDOUGALL: Good afternoon, Your Honor.  
9 Mark MacDougall with Akin Gump along with Stacey  
10 Mitchell and Bob Trout on behalf of Defendant Bijan  
11 Rafiekian.

12 THE COURT: All right. Mr. Rafiekian has  
13 waived his appearance which this Court has approved.

14 We're here for defendant's motion for bill of  
15 particulars, and we're also here for setting of a trial  
16 date. I've reviewed the bill of particulars.

17 Before we get to that, Mr. Gibbs, let me ask  
18 what the current status of production is with respect  
19 to anything the government intends to produce.

20 MR. GIBBS: So, Your Honor, the status of  
21 production is we've been providing discovery on a  
22 rolling basis, and we candidly acknowledge it's been a  
23 fairly large amount of discovery that we provided to  
24 date. There will be some additional discovery that we  
25 plan to push out here in the near future, but it won't

1 be --

2 THE COURT: How near? What kind of time  
3 frame are we talking about?

4 MR. GIBBS: Let me just consult with my  
5 cocounsel for a moment, Judge.

6 (Counsel confer.)

7 MR. GIBBS: So, Judge, sort of the universe  
8 of what we anticipate providing in addition to what  
9 we've already given would include -- there may be some  
10 additional 302s. We have provided some of those to the  
11 defense to review in our office. We anticipate some  
12 more of those. There's a couple of videos that were  
13 produced by the defendant -- or at least one that we're  
14 working on getting a copy of. We anticipate providing  
15 that. That would probably be in the next month or two,  
16 I think.

17 THE COURT: Why so long?

18 MR. GIBBS: Well, the witness we're getting  
19 it from, he has to go overseas to get it. So we're  
20 waiting for him to do that and to provide us a copy of  
21 that.

22 But it's a fairly small amount of material in  
23 comparison with what's been provided already. So I  
24 think that's the status at this point, Your Honor.

25 THE COURT: All right. Other than the

1 Section 4 issues that have already been scheduled, are  
2 there anticipated any other Schedule 4 issues?

3 MR. GIBBS: No, Judge.

4 THE COURT: All right. Let's deal with the  
5 bill of particulars.

6 Mr. MacDougall, are you arguing this?

7 MR. MacDOUGALL: Thank you, Your Honor. May  
8 it please the Court.

9 Rule 7(f) provides and gives the Court  
10 complete discretion to order the government to produce  
11 a bill of particulars. The motion that was filed here  
12 is really quite narrow as motions for bills of  
13 particulars go. We've only asked for ten particular  
14 allegations to be explained by the government. Six  
15 relate to alleged false statements, two to alleged  
16 omissions of material fact, and two to the identities  
17 of alleged coconspirators.

18 Now, the government asserts that the motion  
19 is about discovery, but that's not the case at all.  
20 And to respond to Your Honor's earlier request about  
21 the status of discovery, we believe we will be asking  
22 the Court's assistance with that before too long.

23 But here what we need to understand with  
24 respect to the bill of particulars so that we can  
25 adequately investigate the case, so that we can frame

1 our discovery motions properly, and so that we can  
2 formulate a defense -- the volume of discovery so far  
3 is extensive, and the government's response seems to be  
4 that it's all in the discovery. But I think, as  
5 counsel just acknowledged, that's quite a large volume  
6 of material. Telling us to essentially go find it in  
7 there -- which I'm overstating it, but that's not the  
8 solution.

9 THE COURT: Well, the indictment is specific  
10 as to the statements that they're contending are false,  
11 correct?

12 MR. MacDOUGALL: Well, the statements are  
13 specific, but what's false about them is not.

14 THE COURT: You want them to explain why  
15 they're false other than their contention that they are  
16 false?

17 MR. MacDOUGALL: Well, I can give you an  
18 example, Your Honor. Paragraph 57 of the indictment,  
19 the firm Covington & Burling -- I guess they're just  
20 known as Covington now -- prepared the FARA filing. In  
21 paragraph 57, the government cites a response from  
22 Covington & Burling in a letter to the FARA unit. Both  
23 of those statements -- and we cite them in the brief.  
24 Both of those statements are obviously true. They're  
25 accurate. So they're assessed as being a false

1 statement. They're charged as being a false statement,  
2 but there's no question that they're each true. What  
3 we are seeking from the Court is an order from the  
4 Court to explain to us what's not true about them.

5           The difficulty, as Your Honor knows, when you  
6 go into a case when you're told that a statement is  
7 false but you're not understanding what the  
8 government's position is on the false nature of it is  
9 you're trying a case blind. You can't prepare  
10 witnesses, and you can't really understand, until  
11 Rule 29 is heard, as to what that is. So that's an  
12 example of the false statement issue.

13           THE COURT: What about any of the other  
14 specific false statements? Do they fall into the same  
15 category as far as you're concerned?

16           MR. MacDOUGALL: I'm sorry, Your Honor? I  
17 missed part of that.

18           THE COURT: Well, it seems to me that the  
19 alleged falsity of many of the other specific  
20 statements, it's clear on its face what the government  
21 is contending is false.

22           MR. MacDOUGALL: Well, Your Honor, as  
23 paragraph 57 demonstrates, simply saying -- you know,  
24 for example, in paragraph 58, the company does not know  
25 whether or the extent to which the Republic of Turkey

1 was involved with its retention by the company for a  
2 three-month project. These are statements that were  
3 made by counsel, by very accomplished counsel. These  
4 are their words. These are not the words of the  
5 defendant.

6 THE COURT: I understand. The other  
7 allegations, though, are taken from statements  
8 attributable to this defendant; aren't they?

9 MR. MacDOUGALL: Well, Your Honor, we asked  
10 for ten specific disclosures. Five of them relate to  
11 statements that are in the FARA filing which would have  
12 originated with Covington.

13 THE COURT: All right.

14 MR. MacDOUGALL: The other two, Your Honor --  
15 the other two critical points have to do with who the  
16 conspirators are. As you know, Your Honor, trying a  
17 case with the identity of alleged coconspirators  
18 unknown is almost impossible. Evidentiary issues are  
19 going to be determined based upon whether a  
20 coconspirator made a statement, whether a document  
21 originated with a coconspirator. To permit the  
22 government to essentially identify coconspirators as  
23 the trial progresses without knowledge in advance  
24 really denies us the opportunity to contest the  
25 evidence and to test its validity.



1 THE COURT: All right.

2 MR. MacDOUGALL: Your Honor, there's only  
3 three possible reasons, we would contend, for the  
4 government's objection here:

5 The first is that they don't have the  
6 answers. These allegations shouldn't be in the  
7 indictment in this case if they don't know the answers  
8 to the questions that we've asked.

9 The second is they have a collection of  
10 possible answers, but they don't want to identify any  
11 alleged statement or specific alleged conspirator until  
12 they see the trial is progressing.

13 The third is they do know and they knew when  
14 they prepared the indictment, but for tactical reasons,  
15 they don't want to disclose that to the defense.

16 Your Honor, I contend that none of those are  
17 good reasons to keep the defense in the dark as we go  
18 forward. For that reason, we would ask the Court to  
19 favorably consider and grant our motion for a bill of  
20 particulars.

21 THE COURT: All right.

22 MR. MacDOUGALL: The one thing I'd ask with  
23 the Court's indulgence -- Your Honor, I'd note that  
24 prosecution under this statute is very rare. There's  
25 been fewer than a dozen, by our count, since the law

1 was enacted in the 1930s. There is not a long history  
2 of appellate decisions and trials where you can take an  
3 indictment that charges this offense and say, Okay, I  
4 understand what's going on, and I know how to prepare a  
5 defense.

6 This case is different, Your Honor. We think  
7 it's a different statute that's charged. It's not  
8 common, and we need the Court's assistance in order to  
9 understand what's being charged here.

10 THE COURT: All right.

11 MR. MacDOUGALL: Thank you, Your Honor.

12 MR. GIBBS: Well, Your Honor, I think the  
13 Court hit on sort of our main point on the argument  
14 regarding the statements that are alleged in the  
15 indictment. Again, these are not alleged as 1001 false  
16 statements. These are false statement as part of the  
17 Count 1 conspiracy in this case.

18 I mean, Your Honor is exactly right. If you  
19 read through this, this actually looks like a bill of  
20 particulars. We indicate the document that the false  
21 statement came from. We indicate the particular  
22 paragraph, and we actually quote the false statement or  
23 what we believe is the false statement in there. So I  
24 believe that it would be inappropriate to require the  
25 government to do more with regards to those statements.

1           In terms of the coconspirators in this case,  
2 as we indicated in our moving papers, it's unusual  
3 certainly in this district and in this circuit to  
4 require the government to identify the coconspirators.  
5 In this case, we don't feel like that there is a basis  
6 to require that, and we would stand on the arguments we  
7 made in our response motion, Your Honor.

8           THE COURT: What would be the government's  
9 objection to identifying any persons whose statements  
10 the government intends to introduce as exceptions to  
11 the hearsay rule as coconspirators?

12           MR. GIBBS: Well, I think if we actually have  
13 statements that we anticipate offering under that  
14 hearsay exception, I think that that is certainly a  
15 more appropriate time where we would need to actually  
16 articulate that they are unindicted coconspirators.

17           I think the defense in their pleading made  
18 the point -- and we do agree with it -- we wouldn't  
19 want to have to do this publicly, especially at this  
20 stage of the proceeding. We could certainly if, in  
21 fact, the -- and, again, the defense was exactly right.  
22 This is discretionary with Your Honor. But if Your  
23 Honor determined that in its discretion we needed to  
24 provide information related to individuals we believed  
25 were both coconspirators and whose statements we would

1 intend to offer as an exception to the hearsay rule, we  
2 would request that we do that in some form of letter or  
3 something to the defense where it's not done publicly  
4 at this stage.

5 THE COURT: All right. Anything further on  
6 that?

7 MR. GIBBS: Nothing further on that, Your  
8 Honor. Thank you.

9 THE COURT: Mr. MacDougall?

10 MR. MacDOUGALL: Nothing further, Your Honor.  
11 Thank you.

12 THE COURT: All right. With respect to the  
13 bill of particulars, I am going to order that the  
14 government identify any individuals whose statements  
15 they intend to introduce at trial as statements of a  
16 coconspirator in furtherance of the conspiracy. If the  
17 government thinks that that information needs to be  
18 provided by way of a protective order, it should  
19 discuss with counsel what that protective order is. If  
20 there are any issues there, just bring them to the  
21 attention of the Court.

22 With respect to the request for further  
23 information about the specific paragraphs of the  
24 indictment, I want to look at those a little more  
25 closely, and I'll get you an order out here very

1 quickly.

2 All right. Anything else on that?

3 MR. MacDOUGALL: Nothing further, Your Honor.

4 Thank you.

5 THE COURT: All right. With respect to a  
6 trial date, I've looked at the motion.

7 Mr. Trout or Mr. MacDougall, anything else  
8 you want to tell the Court, since you filed that  
9 motion, about why you think a trial date in September  
10 is necessary? I will tell you: My reaction to the  
11 motion was we would have something in May or June. I'd  
12 be happy to hear from you as to why you think September  
13 is needed.

14 MS. MITCHELL: Thank you, Your Honor. May it  
15 please the Court. We had asked for an extended time  
16 period because, as counsel has conceded at the outset  
17 of this hearing, there is extensive discovery that's  
18 been provided to the tune of 10 terabytes on a couple  
19 of hard drives, as well as additional --

20 THE COURT: Right. Well, you've had a chance  
21 to start going through that now. I understand from the  
22 government's filings that they've tried to provide you  
23 some assistance --

24 MS. MITCHELL: And they have. In candor,  
25 they have been --

1 THE COURT: -- and they provided you some of  
2 their trial exhibits already.

3 MS. MITCHELL: That's absolutely correct,  
4 Your Honor. Notwithstanding that, we have our  
5 obligations and diligence to our client to look through  
6 this information, to look through these documents, and  
7 we are undertaking that.

8 Additionally, for the reasons that I'm  
9 confident Your Honor has reviewed in our *ex parte*  
10 filing, we have additional information that we are  
11 trying to track down on our own. While we have been  
12 doing that and working on that, not unexpectedly, we  
13 are running into some hurdles along the way and having  
14 difficulty getting our arms around all the information  
15 that's set forth in there. I think that will take some  
16 time. Once we achieve those goals, we'll need time to  
17 digest it and pull it together.

18 So we feel that a later trial date is good.  
19 If Your Honor is inclined, I think we could probably  
20 get ready maybe later -- perhaps June, July if that  
21 would please the Court.

22 I know it's not of utmost concern to the  
23 Court, but our client's daughter's wedding is the first  
24 week of August. So we'd like to make sure that we  
25 don't jam him up in that regard as well.

1 THE COURT: How long does the government  
2 think it's case in chief will take?

3 MR. GIBBS: We see this as a one-week trial,  
4 Judge.

5 THE COURT: All right. Give me a little more  
6 information about what it is that is going to take you  
7 a month to get your arms around and produce, Mr. Gibbs.

8 MR. GIBBS: You know, Your Honor, I think it  
9 really is sort of the last odds and ends of the  
10 discovery production. It would be some additional  
11 302s, and again, we would have the defense come to the  
12 office to review those. It would be this video. I'm  
13 not sure there's a whole lot more beyond that. It's  
14 possible. We're being diligent as well. If we come  
15 across --

16 THE COURT: Right. As I understand it,  
17 Mr. MacDougall, you have a clearance.

18 But, Mr. Trout, yours is being processed; is  
19 that right?

20 MR. TROUT: That's right, Your Honor. I have  
21 finished my questionnaire. I thought I was going to  
22 get my fingerprints done today. I can't get it done  
23 today. It's going to be done on Friday.

24 THE COURT: All right.

25 MR. MacDOUGALL: Your Honor, I am,

1 apparently, from a prior case still qualified for  
2 clearance. I spoke with the security officer  
3 yesterday. She's contacting an equity holder for a  
4 compartment, and she hopes to have me ready in the next  
5 week.

6 THE COURT: All right. Mr. Gibbs, is that  
7 holding anything up in terms of what you're producing?

8 MR. GIBBS: No, Judge. Again, we've been in  
9 touch with Maura Peterson as well. We do have the one  
10 CIPA ruling from Your Honor we're waiting on. This is  
11 a -- I mean, there may be no documents that would  
12 require clearances. Obviously, out of an abundance of  
13 caution, we're proceeding with that.

14 THE COURT: All right. There are some  
15 aspects of the case that I appreciate may require a  
16 little more time to deal with than an ordinary case. I  
17 think that there will be more than ample time for a  
18 trial date in July. I'm going to set this down for  
19 trial on July 15.

20 I'm going to set some other dates as well.  
21 I'm going to set a date of April 1 for any Section 5  
22 notices under CIPA by the defense. I'm going to set an  
23 April 15 motions deadline, and we'll have a hearing on  
24 any motions on May 10.

25 The Court will get an order out here shortly



1 on the remaining issues under the bill of particulars.

2 All right. Anything else?

3 MR. GIBBS: None from the government, Your  
4 Honor.

5 THE COURT: All right. Mr. MacDougall?

6 MR. MacDOUGALL: None from the government --  
7 none from the defense, Your Honor. Sorry. It's been a  
8 long time.

9 THE COURT: I understand. Habits are hard to  
10 break sometimes.

11 All right. Very good. Thank you.

12 Counsel is excused. The Court will stand in  
13 recess.

14 -----  
Time: 2:18 p.m.

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22 I certify that the foregoing is a true and  
23 accurate transcription of my stenographic notes.

24

25 /s/  
Rhonda F. Montgomery, CCR, RPR